

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : 09-CR-650
-against- U.S. Courthouse
: Brooklyn, New York
HAROLD TURNER
Defendant :
March 1, 2010
----- X 1:00 p.m.

BEFORE:

HONORABLE DONALD WALTER
United States District Judge
and a jury

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 02 2010 ★

BROOKLYN OFFICE

APPEARANCES:

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7 THE CLERK: All rise.

8 THE COURT: Please be seated.

9 We are waiting for defense counsel.

10 All right. Ladies and gentlemen, I forgot to ask
11 you all one question more.

12 You will hear testimony from federal judges. Would
13 you have any difficulty in deciding whether they are telling
14 you the truth or not just because they're judges?

15 If any of you would, raise your hand.

16 Okay.

17 JUROR 16: I think we went over that in chambers.

18 THE COURT: You did and you answered that.

19 Okay. If I can have your list, gentlemen.

20 Ladies and gentlemen, we are going to take ten
21 minutes more of your time. We can accomplish this a lot
22 faster back in the jury room. We'll be back and tell you who
23 will serve and who'll get to go home.

24 If I can have the lawyers back in the jury room. I
25 don't think we need a court reporter.

1 (Recess taken as the attorneys and the judge retire
2 to the jury room.)

3 THE COURT: Okay. Be seated.

4 All right. Let's see.

5 Mr. Dumpert, you will serve.

6 Mr. Koch, you will be excused.

7 Mr. Kirsch, you will serve.

8 Don't anybody leave until I tell you you can.

9 Ms. Reese, you will be excused.

10 Ms. Didyk, you will be excused.

11 Mr. Anthony, you will be excused.

12 Mr. Lockard, will be excused.

13 Mr. Chamberlain will serve.

14 Mr. Tapia will serve.

15 Mr. Reyes will be excused.

16 Kotlyarsky, am I pronouncing that correctly, you
17 will serve.

18 Mr. Stockland will be excused.

19 Mr. Frazer will serve.

20 Ms. Lau will be excused.

21 Ms. Moore-Harris will serve.

22 Mr. McQuade will serve.

23 Ms. Towers will serve.

24 Mr. Nunez will serve.

25 Ms. Wright will be excused.

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1 Ms. Attard will serve.

2 Mr. Rossa will serve.

3 Ms. Allen will be excused.

4 Mr. Englander will be excused.

5 Ms. Kogan will serve.

6 Ms. Pilutik will be excused.

7 Mr. Schultz will be excused.

8 Mr. Franco will be excused.

9 Mr. Fulcher will serve.

10 All right, one more time. Serving Dumpert, Kirsch,
11 Chamberlain, Tapia, Kotlyarsky, Frazer, Moore-Harris, McQuade,
12 Towers, Nunez, Attard, Rossa, Kogan and Fulcher.

13 Did I get it right?

14 MR. HOGAN: Yes, Your Honor.

15 THE COURT: If I didn't call your name, you are free
16 to go. Check in with the jury lounge where you first came in,
17 get any excuses you may need and see if there are any
18 questions they may have of you.

19 THE COURT: Mr. Dumpert, will you move down to the
20 first seat. Mr. Kirsch, next to him.

21 Mr. Kirsch, will you move next to Mr. Dumpert.

22 Ms. Chamberlain, next to Mr. Kirsch. Mr. Tapia.

23 Ms. Kotlyarsky.

24 Mr. Frazer, move down to the last seat.

25 Ms. Moore-Harris, you will take that first seat

1 behind Mr. Dumpert.

2 Mr. McQuade, you might find it easier to go in that
3 way.

4 Ms. Towers. Mr. Nunez. Ms. Attard. Mr. Rossa.
5 Mr. Cogan. Mr. Fulcher.

6 THE COURT: If you all take the first two seats in
7 the back, that'll be fine.

8 Now, if you will all rise and raise your right hand
9 to be sworn or affirmed.

10 (Jurors sworn to well and truly try the case by the
11 clerk.)

12 THE JURY: I do.

13 THE COURT: Be seated, please.

14 Ladies and gentlemen, what I will now have to tell
15 you is intended to serve as kind of an introduction to the
16 trial of the case. It is not a substitute for the more
17 detailed instructions of law and evidence that I'll give you
18 at the close of the case, and before you retire to consider
19 your verdict.

20 As I told you, this is a criminal case commenced by
21 the United States, which I may sometimes refer to as the
22 prosecution or the government, against the defendant. It
23 comes to court based on an indictment by the grand jury.
24 Indictment dated July 22nd, 2009.

25 It alleges that, "On or about June 2nd, 2009, and

1 June 3rd, 2009, the defendant, Harold Turner, also known as
2 Hal Turner, threatened to assault and murder three United
3 States judges with intent to impede, intimidate and interfere
4 with such judges while engaged in the performance of official
5 duties, and with the intent to retaliate against such judges
6 on account of their performance of official duties in
7 violation of Title 18 United States Code Section 115(1)(b)."

8 Look, the indictment against the defendant is only
9 an accusation, nothing more. It's not proof of guilt or of
10 anything else. In fact, the defendant has denied the charge
11 against him and entered a plea of not guilty; thereby raising
12 issues of facts to be tried by you, a jury of his peers.

13 Here's how the trial will proceed:

14 First, the government has a right to make -- excuse
15 me. The government will make an opening statement at the
16 beginning of the case. What is said in opening statement is
17 not evidence.

18 The statement simply serves the purpose of a
19 introduction to the evidence that the government hopes to
20 produce; a kind of outline to assist you to understand the
21 testimony and documents. Then the government will introduce
22 evidence in support of the charge contained in the indictment.

23 After the government has presented its evidence, the
24 defendant may make an opening statement. They're not required
25 to, but they may make an opening statement. Again, what is

1 said in opening is not evidence. It's an introduction to the
2 evidence that the defendant intends to produce.

3 As I say, the defendant may produce evidence but he
4 is not required to do so. The burden is always on the
5 government to prove every element of each offense charged,
6 beyond a reasonable doubt. The law doesn't impose on a
7 defendant in a criminal case the burden of calling any
8 witnesses or introducing any evidence.

9 After the defendant has completed his case saying,
10 "The defense rests," the government may, if it chooses, to
11 present rebuttal evidence.

12 At the conclusion of all of the evidence, each party
13 has a chance to present oral argument in support of their
14 case. What is said in closing, as in opening, is not
15 evidence.

16 Arguments are designed to present to you the
17 contentions of the parties; that is, what they believe the
18 evidence has shown and what inferences they would like you to
19 draw from the evidence presented. The government has the
20 right to open and close the argument.

21 Then I will instruct you on the law that you must
22 apply in considering your verdict. Your verdict must be
23 unanimous, whether guilty or not guilty.

24 Your purpose as jurors is to find and determine the
25 facts. Under our system of criminal procedure, you're the

1 sole judges of the facts. If at anytime I make any comment
2 regarding the facts, you are at perfect liberty to disregard
3 it. It is important that you perform your duty of determining
4 the facts diligently and conscientiously.

5 On the other hand, and with equal emphasis, I
6 instruct you that the law as given by me constitutes the only
7 law for your guidance. It is your duty to accept it and
8 follow it. It is your duty to follow the law as I give it,
9 even if you disagree with it. We are a nation of laws. You
10 are not at liberty to substitute your own idea of what the law
11 is or what the law ought to be.

12 What you are here to determine is the facts. And
13 you determine those facts solely from the evidence in the
14 case, which consists of the testimony of witnesses and
15 exhibits received in evidence. Questions asked by lawyers are
16 not evidence. Statements and arguments by the lawyers are not
17 evidence. It's up to you to decide what inferences should be
18 drawn from the evidence and what facts have been established
19 by it is evidence.

20 The parties may sometimes present objections to some
21 testimony or other evidence. It's the duty of a lawyer to
22 make an objection when he believes the evidence is not
23 properly offered. So don't be prejudiced against a lawyer
24 just because he makes an objection. And don't be prejudice
25 against the party that he represents.

1 Sometimes I may agree with the objection and sustain
2 them and direct that you disregard certain testimony. You
3 must not consider any evidence or testimony which I've
4 instructed you to disregard.

5 Further, you are not to consider anything you may
6 have read or heard about the case outside the courtroom
7 whether before or during trial.

8 During trial, from time-to-time it may be necessary
9 for me to confer with the lawyers outside your hearing
10 concerning questions of law or procedure. On such an
11 occasion, you may be excused from the courtroom as a
12 convenience to you and to us while we discuss the matters with
13 the lawyers.

14 We'll all try to limit such interruptions as much as
15 possible, but please remember at all times the importance of
16 the matter you are here to determine, and be patient with us
17 even when we seem to be going slowly.

18 You will be listening to the testimony of a number
19 of witnesses. You are the sole judge of their credibility or
20 believability, and the weight to be given to their testimony.

21 In considering the weight and value of the testimony
22 of a witness, you might consider such things the appearance,
23 attitude, and behavior of the witnesses; the interest of the
24 witness in the outcome of the case, if any; the relationship
25 the witness to any party; the inclination of the witness to

1 speak truthfully or not; the probability or improbability of
2 the witness' statement and all other facts and circumstances
3 in evidence.

4 It's up to you. You give the testimony of any
5 witness as much weight and value that you believe it's
6 entitled to received.

7 It's very important for you to hear all the
8 testimony presented. So if at any time during the trial you
9 have trouble hearing the lawyers, the witnesses or me, simply
10 raise your hand and I'll know to ask the lawyer or witness to
11 speak more clearly or slowly as the case may be.

12 As I said, it's up to you, the jury. You're the
13 judges of the facts. And as such, it's important that you be
14 able to hear and understand all that is being presented to
15 you.

16 We will take a couple of breaks during the day. If
17 you have need a break at a non-scheduled time, let us know and
18 we'll take a break.

19 Do we have jury identification tags?

20 THE CLERK: Yes.

21 THE COURT: Because you're judges of the facts, I'm
22 going to ask you to wear your juror tag there at all times
23 while you're in this building. It identifies you as a juror
24 and warns people that they should not even stop to talk to
25 you. This is done because we seek not only to avoid

1 impropriety, but even the appearance of impropriety.

2 During lunch break you needn't remain together. You
3 can eat lunch wherever you please. You can bring lunch with
4 you from home. The jury room has drinks and snacks and a
5 microwave oven and a refrigerator. So if you want to bring
6 lunch in, you can certainly do that.

7 If you're unfamiliar with places downtown, all of
8 the court personnel will be happy to assist you. As I say,
9 you are not required to remain together while court is in
10 recess.

11 You're allowed to go to and from home each day.
12 It's not a sequestered jury, but it is important that you obey
13 the following instruction:

14 First, don't discuss the case. Even amongst
15 yourselves or with anyone else during the course of the trial.
16 It is only after all the evidence is in and you've heard the
17 attorneys' summations and my instructions on the law, that you
18 retire to consider your verdict.

19 During the trial, you should keep an open mind and
20 reach your conclusion only during your final deliberations.
21 And that's why you should not discuss the case even among
22 yourselves until you retire for final deliberations.

23 Don't let anyone else talk to about the case to you.
24 And if anyone does so despite you telling them not to, please
25 report that to me as soon as you're able.

1 It's a normal given tendency to talk to people that
2 you see every day. People that you are thrown into contact
3 with. But I'm going to tell you, please, during the time you
4 serve on this jury, whether in or out of the courtroom, please
5 don't speak to any of the parties or the lawyers or any
6 witness.

7 And by this, I mean not only don't talk about the
8 case. Of course not. But don't talk at all, even to say good
9 morning. Why do I say that? Well, you ask one of the lawyers
10 where's a good place to eat, and they tell you across Cadman
11 Square, and you walk on. What's the harm?

12 Well, people down the hall see you talking with him.
13 They don't know what you're talking about. So we want to
14 avoid even the appearance of any partiality.

15 If you see them get on the elevator first, you wait
16 for the next elevator. They see you on first, they're gonna
17 wait for the next elevator.

18 The case may be subject to news coverage everyday.
19 Please, do not read, watch or listen to such news coverage.
20 Your decision must come from what happens in the four walls of
21 this courtroom and not from anything that the press may find
22 interesting.

23 You may not use Internet services such as Google or
24 Yahoo!! or any of the others to research any topics concerning
25 the trial, including law. Information about any issues in

1 contingent, the parties, the lawyer or the court. After you
2 have been discharged, you can do any of the research you want
3 to. But it is important that this case be decided by the
4 evidence presented in this courtroom and not by any
5 independent research on the part of any juror.

6 We're going to take a short break while Theresa
7 takes you into the jury room and shows you where you can wait,
8 and we'll issue your badges. And then we're going to have an
9 opening statement by the government. And then I'll let you
10 all go.

11 Now, let me ask you, is 9:30 okay for you-all to get
12 here. I mean, where I come from, it's ten minutes to work so
13 I don't really know about commuting. Is 9:30 okay?

14 THE JURORS: Yes.

15 THE COURT: You-all be here by 9:30 in the courtroom
16 tomorrow morning. Be thinking about how you want to do this,
17 I'm very conscious of the fact that you're surrendering your
18 time here:

19 We can go from 9:30 to, let's say, 3:00 or 3:30,
20 with a short break for lunch. I mean, a very short break.
21 And then you'd get home -- well, you'd be at the subway or
22 wherever by 3:30. Or, we can go to taking an hour and-a-half
23 for lunch and two 15-minute breaks and go to 4:00 or 5:00.

24 But you-all talk about it tomorrow morning, and then
25 I will ask somebody to tell me what you prefer doing.

1 Follow Theresa, please.

2 (Whereupon the jurors leave the courtroom at 1:40
3 p.m.)

4 THE COURT: We'll take ten minutes. I'm not going
5 to leave. I'll just sit up here. But certainly, you-all have
6 ten minutes to do whatever you can do in ten minutes.

7 MR. HOGAN: The only other instruction, if the Court
8 recalls the last time around, you told them this was a Chicago
9 case that had been moved here for venue purposes.

10 Can you give them that context again, for openings,
11 please?

12 THE COURT: No problem.

13 No problem, right?

14 MR. OROZCO: No problem, Your Honor.

15 MR. HOGAN: Thank you.

16 THE COURT: You-all want the witnesses sequestered,
17 I assume. And as before, each party will be responsible for
18 making sure that their witnesses will obey the rules of
19 sequestration.

20 MR. HOGAN: The rules of sequestration prior to
21 their testimony, being that they shouldn't discuss their
22 testimony?

23 THE COURT: Yes. Or be in the courtroom or discuss
24 anybody else's testimony.

25 MR. HOGAN: Right. I understand.

OPENING STATEMENT - MAC ARTHUR

15

1 MS. MAC ARTHUR: Your Honor, for the Court's
2 information, I'll be giving the opening statement.

3 THE COURT: All right.

4 (Whereupon a recess was taken.)

5 THE COURT: All rise for the jury.

6 (Whereupon the jury enters the courtroom.)

7 THE COURT: All right. You may all be seated.

8 Ms. MacArthur.

9 (Opening Statement - Ms. MacArthur.)

10 MS. MAC ARTHUR: May it please the Court, counsel,
11 members of the jury.

12 On June 2nd, 2009, three appellate court judges in
13 Chicago issued a decision --

14 THE COURT: Excuse me. Let me interrupt you for a
15 second. I forgot to tell you this. They asked me to tell you
16 this before. You may start over again, Ms. MAC ARTHUR.

17 This is really a Northern District of Illinois case.
18 It originated in Chicago. Then I got appointed to handle it
19 and I moved it here to Brooklyn. That's why it's here.

20 Now, I do apologize to you, Ms. MacArthur. Start
21 again.

22 MS. MAC ARTHUR: Thank you, Your Honor.

23 On June 2nd, 2009, three appellate court judges in
24 Chicago issued a decision in a controversial case. The three
25 judges followed United States Supreme Court law and upheld a

OPENING STATEMENT - MAC ARTHUR

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1 ban imposed by the City of Chicago in a nearby suburb that
2 prohibited the possession handguns within their city limits.

3 The defendant, Harold Turner, despised this
4 decision. And he responded by threatening the judges with
5 death in order to intimidate them into never issuing a
6 decision like that again.

7 Now, Mr. Turner was free to criticize the decision,
8 but threats of violence are not protected by the First
9 Amendment. And when Hal Turner threatened those judges with
10 death on June 2nd, and the next day, he crossed the line and
11 he committed a crime.

12 Now, based on those actions, Hal Turner has been
13 charged in this case with a particular crime based on the June
14 2nd and June 3rd, 2009 Internet posting, or listing, of
15 written words that he made on those days.

16 The charge says, and I hope that you can see this on
17 your screen, that, "On June 2nd and 3rd, 2009, Hal Turner
18 threatened to assault and murder with the intent to assault or
19 murder."

20 I'm sorry, let me say that again.

21 "On June 2nd and June 3rd, 2009, Hal Turner tried to
22 intimidate, interfere with or impede with the work of the
23 judges with intent to try to work through their work with the
24 court by threatening them with assault and murder, or to
25 retaliate against them for the work that they did on their

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1 days."

2 Now, as a result of these charges, the government
3 has the burden of proving to you beyond a reasonable doubt
4 the charge that will be before you at the end of the case.
5 I'm going to spend a few minutes now talking with you about
6 the evidence that we will present to you that will prove that
7 charge, and which will show you that when Hal Turner issued
8 his Internet words on June 2nd and June 3rd, he did so with
9 the intent to instill fear in these judges and to prevent
10 them, to impede them, from doing their job.

11 Now, the three appellate judges that I mentioned are
12 named Frank Easterbrook, Richard Posner and William Bauer.
13 Those three judge work in a federal courthouse in Chicago.
14 They review and decide cases brought to them from a trial
15 court. Three judges were the three judge assigned to the
16 handgun decision that I mentioned just a moment ago.

17 They review decisions. They decide, they look at
18 the law and they try to figure out which way the case should
19 go; should the decision from below stand or should it be
20 reversed.

21 The focus of Hal Turner's comments had to do with
22 that handgun decision. And when Hal Turner started his
23 posting, this listing of words, on June 2nd, 2009, he had the
24 following headline: "Outrage," Hal Turner said, "Chicago Gun
25 Ban Upheld. The Court says Heller ruling by the Supreme Court

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1 not applicable to states and municipalities. American gun
2 owners have been put in spectacular jeopardy by federal court
3 rulings that enabled states and cities to ban all, all,
4 firearms ownership."

5 Mr. Turner spent a page or two describing these
6 decisions of these three appellate court judges. And then on
7 the second page he wrote what he called commentary.

8 Mr. Turner said, "This is the most spectacular act
9 of judicial malfeasance that I have ever witnessed. Yes, I
10 said malfeasance. Intentionally bad rather than misfeasance
11 accidentally bad." And for the next several pages, Mr. Turner
12 interlaced his commentary with his threats of death.

13 On the fourth page of the commentary, Defendant
14 said, "The only thing that has ever stood in the way of
15 their" -- meaning the judges -- "achieving ultimate power is
16 the fact that we, the people, have guns. Now that is very
17 much in jeopardy."

18 Mr. Turner then wrote, "They" -- meaning the judges
19 -- "have not, in our lifetime, faced real free men willing to
20 walk up to them and kill them for their defiance and
21 disobedience."

22 The defendant then quoted Thomas Jefferson, "The
23 tree of liberty must be replenished from time to time with the
24 blood of tyrants and patriots."

25 Then the defendant added his own words. "It is

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1 time," the defendant said, "to replenish the tree. Let me be
2 the first to say this plainly. These judges deserve to be
3 killed. Their blood will replenish the tree of liberty."

4 The defendant, in this commentary, then used the
5 name Matt Hale, which the defendant meant to refer to an
6 horrific crime that took place in the city of Chicago in
7 February of 2005. The reference to Matt Hale and this
8 horrific crime has become Hal Turner's personal calling card.

9 The situation involved a trial judge. A district
10 court trial judge by the name of Joan Humphrey-Lefkow.

11 MR. OROZCO: Objection.

12 THE COURT: On what basis?

13 MR. OROZCO: The prosecution is about to go into
14 solicitation. There's no other reason to mention the Matt
15 Hale case.

16 THE COURT: Overruled. Proceed.

17 As I told you, this is not evidence. This is what
18 the government hopes to prove.

19 Proceed, Ms. MacArthur.

20 MS. MacARTHUR: Matt Hale was a self proclaimed
21 white supremacist. Matt Hale was sued by a church for the use
22 of the churches name. Judge Lefkow was assigned to that case.
23 Judge Lefkow initially ruled in favor of Matt Hale. The
24 church appealed, took it to the 7th Circuit Court of Appeals.
25 The court where the three judges that I mentioned earlier

OPENING STATEMENT - MAC ARTHUR

20

1 actually sit and consider cases.

2 The 7th Circuit, through a panel of three judges,
3 looked at the opinion of Judge Lefkow and decided that she had
4 not held the case correctly. They reversed her decision and
5 sent it back to her for handling as a part of the lawsuit.

6 Judge Lefkow, in keeping with the 7th Circuit's
7 decision, then ruled against Matt Hale. Shortly after she
8 made that decision, Judge Lefkow began to receive death
9 threats. Matt Hale was eventually arrested and charged with
10 plotting with murder the judge.

11 Matt Hale went to trial. He was convicted. Then in
12 February of 2005, after Matt Hale's trial, after his
13 conviction, Judge Lefkow left the federal building in Chicago,
14 at the end of the day.

15 She went home. She went into her house and inside
16 her house she found the bodies of her husband and her mother.
17 Each of the two of them had been shot and killed by somebody
18 who had entered the house during the day.

19 Now, Mr. Turner, in that June 2nd posting, that
20 Internet word description that he did in response to the three
21 judges' decision, ended his commentary section with the
22 following message to those three judges:

23 "Shortly thereafter" -- describing the Judge Lefkow
24 murders -- "a gunman entered the home of that lower court
25 judge and slaughtered the judge's mother and husband.

OPENING STATEMENT - MAC ARTHUR

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1 Apparently," Hal Turner said, "the 7th Circuit U.S. Circuit
2 Court didn't get the hint after those killing. It appears
3 another lesson is needed.

4 These judges are traitors to the United States of
5 America. They have intentionally violated the constitution.
6 They have now also intentionally ignored a major ruling by the
7 U.S. Supreme Court.

8 If they are allowed to get away with this by
9 surviving, other judges will act the same way. These judges
10 deserve to be made such an example of as to send a message to
11 the entire judiciary, obey the constitution or die."

12 Now, on June 3rd, 2009, shortly after midnight,
13 after this June 2nd posting was released to the Internet
14 world, the defendant sent an e-mail message to something that
15 he's associated with, something called
16 HalTurnerRadioNetwork.com.

17 And that e-mail indicated that the entire decision
18 of the 7th Circuit Court of Appeals, the decision of Judges
19 Easterbrook, Posner and Bauer was available and could be
20 looked at by the readers on the Internet.

21 The next morning, on June 3rd, 2009, at about 8:57
22 a.m., eight hours after the first June 2nd posting, with the
23 light of day, Hal Turner got up and returned to the Internet
24 in order to release another Internet response to the judges'
25 decision. On June 3rd, 2009, in that second description, he

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1 began the title -- or began the posting with the words "Behold
2 These Devils." A banner to the three judges who had issued
3 the handgun decision. And then the defendant provide a
4 blueprint of access to those three judges.

5 He showed on that posting the pictures, the
6 photographs of the faces of each of those three judges. He
7 listed their contact information in the work area where they
8 were each day. He gave a phone number for each of those three
9 judges to be reached.

10 He gave a map to the building where they worked. He
11 put on a photograph of the building, his own notation that the
12 building contained, with red arrows, something known as
13 anti-bomb threat barriers. And the defendant said to the
14 Internet world in that June 3rd posting, that the home
15 addresses of those three judges would follow.

16 These are real people. These are real judges. And
17 the defendant chose to let the Internet world know that he
18 knew how to contact them, how to reach them. And that he
19 would be listing their home addresses to the world in a day or
20 two after.

21 These are real people. And these are the people
22 that the defendant referred to when he said they didn't get
23 the hint, in reference to the Judge Lefkow murders, and to
24 whom a new lesson, an additional lesson appeared to be needed.

25 Now, the government will prove to you beyond a

OPENING STATEMENT - MAC ARTHUR

23

1 reasonable doubt that Hal Turner threatened these judges on
2 June 2nd and June 3rd with death or assault or physical harm,
3 with the intent to stop them in their work from ever issuing a
4 decision that they did like the one in the handgun decision.

5 While the government will bear that burden, we'll
6 carry that burden throughout this case, there are three things
7 that we don't have to show.

8 We have don't have to show you that the defendant
9 intended to kill the judges himself. We don't have to show
10 you that the defendant had the means or the ability to carry
11 out this threat.

12 And we don't have to show you that the defendant's
13 words were even ever heard by the three judges that he wrote
14 about.

15 The key issue for you to focus on in this case is
16 the defendant's intent to communicate with these judges. The
17 evidence will show through the defendant's own words in the
18 months and the days leading up to those two postings, that
19 based on the words in those postings, the defendant did intend
20 to threaten them in order to prevent them, to impede them,
21 from ever doing a decision like that again.

22 On June 2nd and June 3rd, 2009, the defendant
23 mustered the power of the Internet world to let these judges
24 know that he knew where they could be reached and how they
25 could be reached.

OPENING STATEMENT - MAC ARTHUR

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1 We have to be a nation of laws, and judges cannot be
2 deterred in their work by threats of death. And it's for
3 those reasons that, at the end of the case, we will return to
4 you and ask you to return the only verdict possible. And that
5 is a verdict of guilty against Hal Turner as charged.

6 Thank you.

7 THE COURT: Thank you.

8 Ladies and gentlemen, I'm going to let you all go
9 home today, at this time. You've earned the whole \$40 dollars
10 that you've earned. Be careful. Please be here ready to go
11 at 9:30 tomorrow morning.

12 And remember, don't discuss the case with anyone.
13 Don't do any independent research. Don't read, watch or
14 listen to any account of it. Be careful. See you-all
15 tomorrow.

16 All rise for the jury.

17 (Whereupon the jury leaves the courtroom at 2:00
18 p.m.)

19 THE COURT: You may all be seated. I have before me
20 a motion in limine from the government, as to, as I recall,
21 four pieces of evidence. If I can find where I was.

22 The government seek to puts in the Web cast dated
23 April 22nd, 2009, regarding the murder of Judge Lefkow's
24 family. I'll listen to the defense.

25 MR. OROZCO: Your Honor, the question for the jurors

1 is whether on June 2nd and June 3rd, Mr. Turner's statement
2 constituted a threat. These prior statements, those prior
3 writings have absolutely nothing to do with the current charge
4 against Mr. Turner. They are not relevant and they should not
5 been given to the jury.

6 THE COURT: I'm going to permit it over defense
7 objection.

8 MR. OROZCO: Now, Your Honor, I would request, then,
9 if Your Honor is allowing this material in, that pursuant to
10 the document completeness, that the entire statement and/or
11 statement be included, because this not the entire recorded
12 statement. These are excerpts that are chosen by the
13 prosecution solely for --

14 THE COURT: Okay. The defense invokes the Rule of
15 Completeness.

16 MR. HOGAN: The Web cast is something like two hours
17 long and it's filled with all kind of irrelevant things. If
18 there's a portion they feel has not been -- that needs to be
19 played to complete the portion we intend to play.

20 THE COURT: Well, I gather they think the whole
21 think ought to be played.

22 MR. HOGAN: Well, I doubt that.

23 THE COURT: I can only go by what he tells me. And
24 he tells me he wants the whole thing. It's all important to
25 his case.

1 MR. HOGAN: Well, that's just not true.

2 THE COURT: You want the whole thing?

3 MR. OROZCO: It's our decision, and we want the
4 whole think.

5 MR. HOGAN: That's absurd.

6 THE COURT: It's not absurd because I just ruled
7 that he's right.

8 MR. HOGAN: Well, Your Honor, with all due respect
9 to Mr. Orozco, he hasn't presented any portions that he wants
10 played, other than to say the whole thing.

11 THE COURT: He has invoked the Rule of Completeness.
12 He said that you will take it out of context. The only way
13 that the jury can seriously consider is it to look at the
14 whole.

15 MR. HOGAN: That's incorrect. And I offer the Court
16 the entire tape, and you can make that decision.

17 THE COURT: Give me the entire tape. I think it's
18 going to go all go, but we'll see.

19 MR. HOGAN: Yes, Your Honor.

20 THE COURT: The next thing is the Web cast of May
21 13th regarding his willingness to call for public officials to
22 be killed.

23 MR. OROZCO: The same objection, Judge.

24 THE COURT: Tell me about that one again, please.
25 Mr. Hogan, or somebody from the government.

1 MR. RIDGWAY: Your Honor, the portion that we
2 clipped is about -- I've excerpted the entire portion. It's
3 entirely topically separate from the rest of the entire Web
4 cast, which I doubt --

5 THE COURT: Which one are we talking about?

6 MR. RIDGWAY: May 13th radio Web cast. It's on page
7 3. It's talking about how this is the defendant's own words
8 also in which he says he's giving up on trying to argue or
9 convince the other side, that more drastic measures are
10 needed. This is two weeks before -- two and-a-half weeks
11 before June 2nd.

12 THE COURT: I am, again, going to allow it. Do you
13 want to insist on the Rule of Completeness?

14 MR. OROZCO: Yes, Your Honor.

15 THE COURT: All right. I'll look at the whole darn
16 thing, both of them. And while I may exclude it under 403,
17 some of it, as totally irrelevant to the question at hand,
18 I'll do it. All right.

19 MR. OROZCO: Judge, with regard to that one posting,
20 I just want to point one thing out to the Court, is that
21 there's about a 15 to 20 minutes beforehand where Mr. Turner
22 speaks about, in his opinion, a pending civil war brewing.
23 Which is why the context needs to be added to those prior
24 statements. So just a note for the Court when it does listen
25 to the tapes.

1 THE COURT: Okay. Next is the e-mail to a supporter
2 encouraging him to attack public officials on July 4th, 2009.

3 Same objection?

4 MR. OROZCO: Same objections, Judge.

5 THE COURT: What is the objection?

6 MR. OROZCO: This is the June 2nd e-mail, is that
7 correct?

8 THE COURT: No. This is July 4th, 2009, is what it
9 says.

10 MR. OROZCO: I think we're looking at the wrong
11 dates here, Judge.

12 THE COURT: What is the date, then. I have,
13 according to this, it is -- I'm sorry. Wait a second. Strike
14 it. We're not talking about that.

15 This is e-mail to a reader about a George Tiller
16 murder on June 1st, 2009. Is that the next item?

17 MR. RIDGWAY: Your Honor, an e-mail of May 31, 2009.

18 THE COURT: I was giving the wrong date. I beg your
19 pardon.

20 It's a May 31st, 2009 e-mail to a supporter
21 encouraging supporter to attack public officials. Is there
22 objection to that?

23 MR. OROZCO: Again, Judge, objection over relevancy.

24 THE COURT: I think it is relevant, so I will
25 overrule the objection.

1 The next is the e-mail to a reader about the George
2 Tiller murder on June 1st.

3 MR. OROZCO: Judge, that's highly prejudicial.

4 THE COURT: Well, all evidence, if it's relevant, is
5 prejudicial. Let me see it.

6 MR. OROZCO: Briefly, if I may submit, George Tiller
7 is not a public official. George Tiller is the abortion
8 doctor.

9 THE COURT: I know.

10 MR. OROZCO: I don't see how that is relevant to the
11 issue at hand. If the prosecution, as you instructed them, is
12 limited to proving on June 2nd and June 3rd as to attacking a
13 public official with intent to impede, I don't see how George
14 Tiller comes into play.

15 THE COURT: I would listen to you, Mr. Ridgway.

16 MR. RIDGWAY: Your Honor, this also, we think, goes
17 to his intent to intimidate and to impede. Just because
18 George Tiller is not a public official doesn't mean -- it's
19 someone whom the defendant disagrees with on a social issue.
20 And so I think that's what is animating Defendant's intent of
21 June 2nd and June 3rd.

22 THE COURT: You will not open the abortion question
23 on this. I will sustain the objection by counsel. We're not
24 going to add that, the George Tiller murder in here.

25 The next, and last thing, as I understand it, the

1 e-mail to a person who criticized him on June 2nd saying, "It
2 won't be so funny when you see what happens when they catch
3 him going to work."

4 MR. OROZCO: The same objections as with the Tiller
5 objections. This is a private e-mail. It's not going out on
6 the Internet. And it's certainly not with regard to any
7 public official. I fail to see how it's relevant to the
8 charge.

9 THE COURT: I think it is relevant to his intent and
10 to whether it's a true threat or not. I will permit that to
11 come in.

12 Now, where can I watch these two Web casts?

13 MR. HOGAN: We have disks. I'm not sure if we have
14 them in court with us. I can bring them back over here. But,
15 you know, I can tell you, Judge, the representation that this
16 is all interrelated, and that there's portions that need to be
17 played.

18 THE COURT: I understand. Do you have a transcript
19 of the entire thing?

20 MR. RIDGWAY: We don't.

21 THE COURT: I read faster than I watch.

22 MR. HOGAN: It's two hours long, and it's all oral.
23 There's no video.

24 THE COURT: I understand.

25 MR. HOGAN: I think what we have -- and maybe Mr.

1 Ridgway can correct me on this. I think what we have is the
2 entire Web cast and the clip; they're separate.

3 THE COURT: Good. I would like to see both.

4 MR. HOGAN: We'll try and provide them in that
5 format to you. It may take us a couple minutes to go back and
6 forth.

7 THE COURT: Where is my office?

8 THE CLERK: 730 South.

9 THE COURT: If you bring it up to me, I'll watch it.

10 MR. HOGAN: Yes.

11 THE COURT: I gather that I can load it in and tell
12 what parts you want in, and the whole Web cast follows.

13 MR. RIDGWAY: We can give time spots for sections we
14 would like to admit, and then you can listen to the entire Web
15 cast.

16 THE COURT: You have a transcript in the motion that
17 indicates what parts you want in there.

18 MR. HOGAN: Well, the parts we want in there are
19 quoted in our brief. It's very short.

20 THE COURT: The first, I would decide for myself.
21 And next, I believe, is the retaliation.

22 MR. HOGAN: We can point you to the portion.

23 THE COURT: Bring the stuff, I'll have it ready for
24 tomorrow morning; a ruling on it.

25 MR. SANAN: Judge, can we have a second?

1 Judge, based on your ruling this morning about how
2 everything is limited to no FBI materials, everything like
3 that. In accordance with that, here's my question to Your
4 Honor: If they have a witness on the stand, and I'm assuming
5 it may be the first or second witness tomorrow morning, that
6 opens the door to the 2005 statement that Hal Turner made
7 regarding Judge Lefkow -- you heard Judge Lefkow come up in
8 the opening of Ms. MacArthur.

9 THE COURT: Yes.

10 MR. SANAN: They open that door up and they ask the
11 question, In 2005 did Hal Turner make a statement regarding
12 Judge Lefkow -- because this evidence came in the first trial.
13 There's one statement, I think, it said she's worthy of death
14 or got you was one of those things.

15 It's my understanding in 2005 he was an FBI
16 informant when he made that statement. And it's our position
17 if they bring up that evidence, that opens the door for us to
18 ask about that on cross. I'd ask this Court for a ruling
19 based on that.

20 MR. HOGAN: Well, we don't intend to do it.

21 THE COURT: Look, they open the door, A, I'm going
22 to be angry. And B, I don't know what will happen. If he was
23 an FBI informant at the time, and you-all put that in, it
24 sounds to me like he's got a legitimate question. But you've
25 just assured me you're not going to.

1 MR. HOGAN: We're not.

2 THE COURT: Great.

3 See you-all in the morning at 9:30.

4 (Whereupon the matter was adjourned to March 2,
5 2010, at 9:30 a.m.)

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